TERRA RESOURCES, INC.

IBLA 87-205 Decided January 24, 1989

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, dismissing protest challenging expiration of noncompetitive oil and gas lease W-20013.

Affirmed.

1. Estoppel--Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases: Expiration--Oil and Gas Leases: Extensions--Regulations: Generally--Statutes

An essential element of a claim for estoppel is that the party asserting it must be ignorant of the true facts. Since, however, all persons are presumed to have knowledge of relevant statutory and regulatory provisions, estoppel will not lie when the legal con- sequences of an action are clearly set forth in statute and/or regulation.

APPEARANCES: Robert C. Hawley, Esq., Denver, Colorado, and William H. Everett III, Esq., Terra Resources, Inc., for Terra Resources, Inc.

OPINION BY ADMINISTRATIVE JUDGE LYNN

Terra Resources, Inc. (Terra), has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated November 21, 1986, dismissing its protest challenging expiration of noncompetitive oil and gas lease W-20013.

BLM issued lease W-20013 to Erving Wolf, effective March 1, 1953. The lease covered 640 acres of land situated in Crook County, Wyoming, and was issued pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. | 226 (1952). 1/ The lease passed in total by several mesne assignments. A partial assignment of 40 acres (SE^ NW^ sec. 8) was made to Richard B. Stevens, effective February 1, 1963. Interest in the remaining 600 acres eventually passed to Terra, effective November 1, 1970.

Under section 1 of the original lease, the primary term was 5 years "and so long thereafter as oil or gas is produced in paying quantities." On March 26, 1958, lease W-20013 was extended for 5 years, to February 28,

1/ When issued, the lease covered the N\ NE^, NE^ NW^ sec. 7, E\ SW^, W\ SE^, S\ N\, NW^ NW^ sec. 8, NW^ NE^, W\ SW^, SE^ SW^ sec. 17, T. 50 N., R. 68 W., sixth principal meridian, Crook County, Wyoming.

1963, at the request of the lessee. See 43 CFR 192.120 (1954). As a result of the partial assignment to Stevens, the lease was extended an additional 2 years, to January 31, 1965. See 43 CFR 192.144(b) (1963). Thereafter, the lease was held by production from well No. 7-1, completed February 9, 1964, in the NW^ NE^ of sec. 7.

Effective April 1, 1984, Terra assigned all of the record title interest in 200 acres covered by lease W-20013 (N\ NE^, NE^ NW^ sec. 7, and W\ NW^ sec. 8) to Oxtex, Inc. (Oxtex). This partial assignment was designated with the lease number W-20013-B and included the acreage con- taining the producing well.

On August 1, 1983, Terra executed an assignment of 30 percent of the record title interest in the 400 acres of land remaining under lease W-20013 (S\ NE^, E\ SW^, and W\ SE^, sec. 8, and NW^ NE^, W\ SW^, and SE^ SW^, sec. 17) to the TXO Production Corporation (TXO). In a May 17, 1984, decision, BLM approved the assignment effective September 1, 1983. BLM's decision stated that the interest assigned was a 30 percent interest, and then described the land in lease W-20013 as two parcels of land of 400 and 200 acres with record title then held, respectively, by Terra (70 percent) and TXO (30 percent), and Terra (100 percent). The 200-acre parcel was referred to as lands not included in the assignment. The May 1984 BLM deci-sion concluded: "Lease W-020013 retains a total of 600 acres per 43 CFR 3106.7-5."

On December 5, 1985, BLM corrected its May 1984 decision to show that the 30 percent record title interest assignment did not pertain to the 200 acres previously assigned to Oxtex and listed as lease W-20013-B.

By decision dated May 2, 1986, BLM notified TXO that lease W-20013 had expired by its own terms on March 31, 1986. BLM stated that, by virtue of the partial assignment to Oxtex, effective April 1, 1984, lease W-20013 had been segregated 2/ and was entitled to a 2-year extension until March 31, 1986, pursuant to 43 CFR 3107.5-3, even though BLM had "failed to grant" the extension. 3/ However, BLM concluded that the lease must be deemed to

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2/ 43 CFR 3106.7-5 provides in relevant part: "An assignment of record title to 100 percent of a portion of the lease segregates the assigned portion and the retained portion into separate leases."

3/ 43 CFR 3107.5-3 provides in relevant part: "Undeveloped parts of leases retained or assigned out of leases which are extended by production, actual or suspended, * * * shall continue in effect for 2 years after the effective date of assignment and for so long thereafter as oil or gas is produced in paying quantities."

Because 43 CFR 3107.5-3 applies only to leases issued after Sept. 2, 1960, BLM's citation of this regulation as authority for the 2-year extension of lease W-20013 is erroneous. The proper authority is 43 CFR 3107.5-2 which provides: "Undeveloped parts of leases retained or assigned out of leases which are in their extended term shall continue in effect for 2 years after the effective date of assignment, provided the parent lease was issued prior to September 2, 1960." Because the substance of both regulations is the same, the improper citation is harmless error.

have expired because "[i]n reviewing the lease file and checking with our Newcastle Resource Area Office, we find nothing to indicate there was any activity to hold this lease beyond March 31, 1986."

There is no indication in the record that BLM notified Terra of the segregation or expiration of lease W-20013.

On October 30, 1986, Terra filed a protest, stating that it had recently become aware that certain lands covered by lease W-20013 were included in a listing of lands subject to a simultaneous oil and gas lease drawing. Terra requested that the lands be withdrawn from the list and lease W-20013 reinstated as to the 400 acres formerly held by Terra and TXO. Terra stated that although it had been "active in drilling and production and [had] plans to continue such activity," it had not been notified that the lease had been segregated, was no longer held by production, or had expired.

In a November 21, 1986, decision, BLM dismissed Terra's protest. BLM acknowledged that it had failed to follow its ordinary procedures and had not notified Terra of the segregation caused by the partial assignment, had not switched the producing account from lease W-20013 to lease W-20013-B, and had not notified Terra that lease W-20013 had reverted to a nonproducing lease extended for 2 years based upon the partial assignment. Nevertheless, BLM concluded that the segregation and 2-year extension had occurred by operation of law independent of any action on its part. BLM held that, in the absence of any evidence from Terra that there was either production or diligent drilling on the retained portion of the lease on March 31, 1986, the end of the 2-year period, the lease must be deemed to have expired on that date. 4/

In its statement of reasons for appeal (SOR) from the November 1986 BLM decision, Terra does not argue against the legal effect of the partial assignment. Instead, Terra contends that BLM's failure to notify it that lease W-20013 was no longer held by production because of the segregation caused by the partial assignment, but instead had merely been extended for 2 years, and that the lease had subsequently expired, constituted a denial of due process and was arbitrary, capricious, and an abuse of discretion. Because this failure of notification was contrary to BLM's established policy, Terra argues that BLM was estopped from cancelling the lease (SOR at 6). Terra alleges that at all times it believed the lease was in full force and effect and that BLM's determination that the lease had expired constituted a change of position detrimental to it. Id. at 7. Terra con- cludes that either the lease should be reinstated or a new lease issued, with itself and TXO as owners, respectively, of 70 and 30 percent of the leasehold estate.

4/ BLM's implication, at page 2 of this decision, that the lease could have been extended by "diligent drilling" operations is incorrect. Such an extension is available only when a lease is in its primary term. 30 U.S.C. | 226-1(d) (1982). That is not the case here. See Alta Vista Resources, Inc., 10 IBLA 45 (1973).

BLM admits and the record fully supports the conclusion that Terra was not notified of any of the legal effects of actions taken by Terra beginning with the April 1, 1984, partial assignment to Oxtex. BLM also admits that its failure to notify Terra was contrary to its usual procedures. BLM states that the producing account was erroneously not transferred from lease W-20013 to lease W-20013-B after the April 1, 1984, partial assignment to Oxtex, and that this error was not discovered until March 1986 during a reconciliation of records of BLM and the Minerals Management Service. The question for decision, therefore, is whether BLM's failure to notify Terra of the legal consequences of Terra's actions constitutes grounds for estoppel.

[1] The Board has well-established rules governing consideration of estoppel issues. First, we have adopted the four elements of estoppel described by the Ninth Circuit Court of Appeals in United States v. Georgia-Pacific Co., 421 F.2d 92, 96 (9th Cir. 1970), quoting Hampton v. Paramount Pictures Corp., 279 F.2d 100, 104 (9th Cir. 1960). See Enfield Resources, 101 IBLA 120 (1988); Ptarmigan Co., 91 IBLA 113, 117 (1986). These elements are: (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that his/her conduct shall be acted on or must so act that the party asserting estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped. Second, we have adopted the rule of numerous courts that estoppel is an extraordinary remedy, especially as it relates to the public lands. Harold E. Woods, 61 IBLA 359, 361 (1982). Third, estoppel against the Government in matters concerning the public lands must be based upon affirmative misconduct, such as misrepresentation or concealment of material facts. United States v. Ruby Co., 588 F.2d 697, 703-04 (9th Cir. 1978); D. F. Colson, 63 IBLA 121 (1982); Arpee Jones, 61 IBLA 149 (1982). Finally, we have noted that while estoppel may lie where reliance on Government statements deprived an individual of a right which he would have acquired, estoppel does not lie where the effect of such action would be to grant an individual a right not authorized by law. 43 CFR 1810.3(c); Raymond T. Duncan, 96 IBLA 352 (1987); Edward L. Ellis, 42 IBLA 66 (1979).

Under these standards, the doctrine of estoppel does not apply in the present case. The third major element of estoppel requires that the person seeking estoppel must be ignorant of the true facts. The facts at issue in this case concern the legal effects of actions taken by Terra.

The first fact concerns the segregation resulting from Terra's partial assignment to Oxtex of 200 acres of land initially covered by lease W-20013. Segregation under such circumstances occurs by operation of law. Section 30(a) of the Mineral Leasing Act, as amended, 30 U.S.C. | 187a (1982), clearly provided both now and when the partial assignment was made that "[a]ny partial assignment of any lease shall segregate the assigned and retained portions thereof." See also 43 CFR 3106.7-5.

The second fact concerns the effect of the assignment of the portion of the lease on which the producing well was located. When lease W-20013 was issued, section 30(a) of the Mineral Leasing Act, 30 U.S.C. | 187a (1952),

provided that, in the case of assignments of portions of leases in their extended term because of production, the "segregated lease of any undeveloped lands shall continue in full force and effect for two years and so long thereafter as oil or gas is produced in paying quantities." 5/ See Safarik v. Udall, 304 F.2d 944 (D.C. Cir. 1962). This statutory provision was expressly incorporated into lease W-20013. Moreover, as noted supra,
it is also still a matter of Departmental regulation.

In Margaret H. Paumier, 2 IBLA 151, 154 (1971), the lessee argued
that BLM had not advised her sufficiently prior to the expiration of her lease, which was in an extended term, of the impending expiration and the steps that might be taken to extend the lease. We held:

> [O]ne who holds an oil and gas lease from the United States is presumed to know the law and regulations and will conduct his affairs relative to the lease strictly in accordance therewith. A lessee's unfamiliarity with the regulations does not excuse his failure to take advantage of benefits which might be obtained thereunder. * * * Further, there is no requirement in law or regulation which compels the land office to give prior notice to lessees that their leases are about to expire and that a further extension of the lease term may be obtained if a certain course
> is followed. [Citation omitted.]

Similarly, Terra is presumed to have knowledge of the relevant stat-utes and regulations affecting its lease. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Because of its imputed knowledge, Terra can- not successfully claim ignorance of the material facts without presenting extraordinary circumstances overcoming that presumption. Fuel Resources Development Co., 100 IBLA 37, 43 (1987); Landmark Exploration Co., 97 IBLA 96, 99 (1987); Tom Hurd, 80 IBLA 107, 110 (1984); see generally, United States v. Wharton, 514 F.2d 406, 412 (9th Cir. 1975). 6/

5/ This statutory provision was subsequently amended by section 1(6) of the Act of July 29, 1954, ch. 644, 68 Stat. 583, 585, and by section 6 of the Act of Sept. 2, 1960, P.L. 86-705, 74 Stat. 781, 790. Leases issued prior to Sept. 2, 1960, as was lease W-20013, are entitled to a 2-year extension in accordance with the statutory language in effect at the time of their issuance. 43 CFR 3107.5-2; Leslie C. Jonkey, 3 IBLA 280 (1971); Sherrill Sue Robert, A-30783 (Aug. 21, 1967), at 2 n.1; Southern Union Production Co., 70 I.D. 406, 408 (1963).

6/ Although the facts are somewhat similar, Odessa Natural Corp., 30 IBLA 28 (1977), differs from the present case in one essential aspect. In Odessa, BLM failed to notify a lessee that the retained portion of its base lease had been segregated by the approval of an assignment of a portion of the base lease containing the only producing well, and that the lease had been changed from a royalty to a rental status. BLM subsequently held that the lease had terminated under 30 U.S.C. | 188(b) (1970) for failure to
pay rental due on the lease anniversary date. The Board held that BLM
was responsible for notifying the lessee when a "change in lease status" occurred because, in the absence of notification, the lessee "would have
had no way of knowing on the anniversary date * * * that rental was due."

Moreover, in order for estoppel to lie against an agency of the Federal Government, there must be affirmative misconduct by that agency, such as an affirmative misrepresentation or concealment of a material fact. United States v. Harvey, 661 F.2d 767, 773-74 (9th Cir. 1981). There is no evi- dence that BLM at any time affirmatively either misrepresented or concealed a material fact which appellant then relied upon to its detriment. BLM's failure to notify Terra of the legal consequences of Terra's actions, based at least in part on its failure to modify its own records, does not rise to the level of an affirmative misrepresentation or concealment of material facts. See The Polumbus Corp., 22 IBLA 270, 275 (1975). The absence of any affirmative misconduct distinguishes the present case from Brandt v. Hickel, 427 F.2d 53 (9th Cir. 1970), cited by Terra. 7/ Accordingly, we conclude that BLM is not estopped from holding that oil and gas lease W-20013 expired on March 31, 1986, at the end of its 2-year extended term. 8/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Kathryn A. Lynn
Administrative Judge
Alternate Member

I concur:

John H. Kelly
Administrative Judge

fn. 6 (continued)
Odessa, supra at 30. Under these circumstances, we concluded that BLM could not hold that the lease had terminated for failure to pay rent. See also Woods Petroleum Corp., 23 IBLA 12 (1975).

In the present case, BLM has not held that lease W-20013 expired because of the failure to pay rent, but rather because of the expiration of the 2-year extended period following segregation of the producing well from the remainder of the lease. Because the legal effects of Terra's actions are clearly set forth in statute and regulation, as discussed in this opinion, Terra is deemed to have had notice that the segregation resulted in only a 2-year extension of the lease term. Terra's failure to take steps to ensure that the lease would be entitled to a further extension cannot be attributed to any omission by BLM. Paumier, supra.

7/ In its SOR, appellant consistently refers to BLM's "cancellation" of lease W-20013. BLM did not take, nor was it required to take, any action to cancel the lease. Instead, the lease expired by operation of law. See Oil Resources, Inc., 28 IBLA 394, 405, 84 I.D. 91, 96-97 (1977). Thus, the cases cited by Terra in which various courts reversed the Department's cancellation of erroneously issued oil and gas leases are not appropriate here. BLM did not cancel lease W-20013, but merely recognized its expira- tion by operation of law.

8/ Terra has presented no evidence either in its protest or on appeal which suggests that lease W-20013 was subject to a further extension.